IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10687 of 2004
To
SPECIAL CIVIL APPLICATION No. 10691 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DEVILA SURTI BHAVAN CHARITABLETRUST - Petitioner(s)

Versus

COLLECTOR, SURAT & 32 - Respondent(s)

==========

Appearance :
MR AS VAKIL for Petitioner(s)
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.
MRS KETTY A MEHTA for Respondent(s)
==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/12/2005

ORAL JUDGMENT

1. In the present group of petitions, the petitioners have challenged a common order dated 19.7.2004 passed by the Additional Secretary (Appeals), Revenue

Department, Government of Gujarat. The impugned order pertains to the revision application filed by some of the respondents herein challenging the order dated 31.7.98 passed by the Collector, Surat. It is not in dispute that by virtue of the order dated 31.7.98, the Collector had granted NA permission for the land in question subject to certain conditions. This order was passed at the behest of the petitioner in Special Civil Application No.10687 of 2004. It appears that some of the persons claiming interest in the suit land filed the revision application before the Government challenging the order passed by the Collector. It was in these proceedings that the Additional Secretary passed the impugned order. It also appears that in the meantime, the petitioners in Special Civil Application Nos.10688/04 to 106891/04 acquired interest in the suit lands. It is also not in dispute that the petitioner in Special Civil Application No.10687 of 2004 who is the recipient of the benefits of the order passed by the Collector on 31.7.98 was not joined as party in the proceedings before the Additional Secretary. A specific ground in this regard has been taken by the petitioner in para 7.2 of the petition. It is stated that the Collector passed the order on 31.7.98 on an application filed by respondent No.3 as well as the application filed by the petitioner. However, in the revision application, the petitioner-Trust was not made a party. It is stated that the petitioner Trust has become owner of the entire land since 1988. It is stated that the petitioner-Trust was a party to the proceedings before the Collector and the order of the Collector was in favour of the petitioner-Trust. It is, therefore, contended that the petitioner-Trust was a necessary party before the Secretary (Appeals). To this factual averments, there is no denial on record. From the available material on record, therefore, it would appear that when the Additional

Secretary was revising the order passed by the Collector on 31.7.98, the petitioner of Special Civil Application No.10687 of 2004 who was a necessary party was not given any opportunity of being heard. Thus on this short ground alone, the order passed by the Additional Secretary deserves to be set aside. I am not going into the question of locus standi of other petitioners to be joined as party-respondents in the proceedings before the Additional Secretary and quashed the order only on the ground that the petitioner of Special Civil Application No.10687 of 2004 was not heard. However, to avoid any legal complications, it would also be open for the remaining petitioners to seek to be joined as party-respondents in the proceedings before the Additional Secretary which I am about to remand for further hearing and disposal.

2. Learned advocate Shri Vakil appearing for the petitioners and Mrs.Mehta appearing for the private respondents submitted that the disputes with respect to the ownership rights over the property in question have been settled between the parties. Be that as it may. It would be for the Additional Secretary to take such developments in the fresh proceedings.

3. In conclusion, the impugned order dated 19th July 2004 passed by the Additional Secretary is quashed. Proceedings are remanded to the Additional Secretary for fresh consideration on merits after giving an opportunity of being heard to the petitioner in Special Civil Application No.10687 of 2004 and remaining petitioners if they so apply. It is clarified that I have expressed no opinion on the contents of the order of the Additional Secretary. With these directions, these

petitions are allowed to the above limited extent. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)

(vjn)